

Title 35-A: PUBLIC UTILITIES
Chapter 41: MAINE MUNICIPAL AND RURAL
ELECTRIFICATION COOPERATIVE AGENCY ACT

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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 41: MAINE MUNICIPAL AND RURAL
ELECTRIFICATION COOPERATIVE AGENCY ACT

Subchapter 1: GENERAL PROVISIONS

§4101. SHORT TITLE

This chapter shall be known and may be cited as the "Maine Municipal and Rural Electrification Cooperative Agency Act." [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4102. FINDINGS AND DECLARATION OF NECESSITY

It is found and declared that: [1987, c. 141, Pt. A, §6 (NEW).]

1. Supply necessary. An adequate, reliable and economical supply of electricity in the State is a necessity to the enjoyment of life and health by the people of the State and its absence would endanger the State, its people and its economy;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Development. The provision of a means of promoting the development of an adequate, reliable and economical supply of electricity is a matter of public and state concern, is a public purpose and is for the general good of the inhabitants of the State;

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Deficiency. There exists a serious deficiency in the ability of various municipalities and rural electric cooperatives in the State presently providing electricity for sale at retail to finance the acquisition, construction and installation of generation, transmission and distribution facilities necessary to ensure an adequate, reliable and economical supply of electricity, and that deficiency constitutes an exigency under which the Legislature may act;

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Supply. The enactment of this chapter constitutes the most expedient way for the Legislature to provide a means for those municipalities and rural electric cooperatives to develop an adequate, reliable and economical supply of electricity; and

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Public interest. The necessity of the public interest for the provisions enacted is declared as a matter of legislative determination.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4103. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. Agency. "Agency" means the Maine Municipal and Rural Electrification Cooperative Agency.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Cooperative. "Cooperative" means any corporation organized as of January 1, 1981, under chapter 37 or former Title 35, chapters 221 to 227 on a cooperative plan under the laws of the State and supplying or authorized to supply electricity.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Municipality. "Municipality" means any municipal, plantation or quasi-municipal electric, or electric and utility, corporation, or municipal electric, or electric and utility, system within the State which, as of January 1, 1981, was authorized to and engaged in the manufacture, generation, transmission, distribution, purchase or sale of electricity to the general public.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. New England power pool. "New England power pool" means the relationship or organization created by the New England power pool agreement.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. New England power pool agreement. "New England power pool agreement" means the contractual agreement between electric utilities which is open to all electric utilities, whether private or governmental, operating in New England, which provides for cooperation and joint participation in developing and implementing a regional bulk power supply of electricity, which constitutes the central dispatching and primary pooling arrangements for electric utilities in the New England states, and which has been permitted to become effective under the Federal Power Act by the Federal Power Commission.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Person. "Person" means person as defined in section 102 or any public agency, state or political subdivision or agency of the State, or any body politic of any nature organized and existing under the law of any state, the United States, any Province of Canada and also includes Canada, its provinces and all political subdivisions, departments, agencies and instrumentalities of Canada.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Project. "Project" means any plant, works, system or facilities inside or outside the State, and real and personal property of any nature or any interest in any of them, together with all parts of them and appurtenances to them, used or useful in the generation, production, transmission, distribution, purchase, sale, exchange or interchange of electricity and in the acquisition, extraction, conversion, transportation or storage or reprocessing of fuel of any kind for any purposes or an interest in, or the right to the use, services, output or capacity of a plant quota, works, system or facilities; provided that "project" does not include construction of nuclear generating facilities or the storage, reprocessing or transportation of nuclear fuel within the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Project cost. "Project cost" means, but is not limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment, extension or disposal of a project or part of a project, including:

- A. The cost of studies, plans, specifications, surveys and estimates of costs and revenues relating to them; [1987, c. 141, Pt. A, §6 (NEW).]
- B. The cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises and preparation of applications for them; [1987, c. 141, Pt. A, §6 (NEW).]
- C. Administrative, legal, engineering and inspection expenses; [1987, c. 141, Pt. A, §6 (NEW).]
- D. Financing fees, expenses and costs; [1987, c. 141, Pt. A, §6 (NEW).]
- E. Working capital; [1987, c. 141, Pt. A, §6 (NEW).]
- F. Initial fuel costs; [1987, c. 141, Pt. A, §6 (NEW).]
- G. Interest on the bonds during the period of construction and for a reasonable period afterwards as may be determined by the agency; [1987, c. 141, Pt. A, §6 (NEW).]
- H. Establishment of reserves for the payment of debt service, for renewals and replacements, for working capital, for operating expenses and for any other purposes determined reasonable and proper; [1987, c. 141, Pt. A, §6 (NEW).]
- I. Prepayments under contracts for the purchase of capacity and output; and [1987, c. 141, Pt. A, §6 (NEW).]
- J. All other expenditures of the agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension or disposal of a project and the placing of the project into operation. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 2: ESTABLISHMENT AND ORGANIZATION

§4131. CREATION OF MAINE MUNICIPAL AND RURAL ELECTRIFICATION COOPERATIVE AGENCY

1. Establishment. The Maine Municipal and Rural Electrification Cooperative Agency, as established pursuant to Title 5, chapter 379, is a body politic and corporate and political subdivision of the State with the duties and powers set forth in this chapter. The agency is constituted as a public instrumentality and as a quasi-municipal corporation, and the exercise by the agency of the powers conferred by this chapter is held to be the performance of public and essential governmental functions of the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Powers. The powers of the agency shall be exercised by a board of directors.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Appointment of directors. Directors shall be appointed as follows.

- A. The governing body or board of directors of any municipality and the board of trustees or directors of any cooperative shall each select a single director to serve on the board, provided that no director may be selected by more than one cooperative or municipality. [1987, c. 141, Pt. A, §6 (NEW).]

B. The Governor shall also appoint as a member a person who is not affiliated with any municipality or cooperative, as defined in section 4103, subsection 5, to represent the general public. [1987, c. 141, Pt. A, §6 (NEW).]

C. The Director of the Governor's Energy Office, or another employee of that office, as the director may from time to time designate in writing filed with the clerk of the agency, shall serve as a member of the board of directors. [2011, c. 655, Pt. MM, §17 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

[2011, c. 655, Pt. MM, §17 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

4. Oath. Each director, before entering upon his duties, shall take and subscribe an oath to perform the duties of office faithfully, impartially and justly to the best of his ability. A record of the oaths shall be filed in the office of the Secretary of State.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Term. Directors shall serve for terms of 5 years each. The terms shall end on July 1st each year as follows: Two in 1982 and every 5 years thereafter; 2 in 1983 and every 5 years thereafter; 2 in 1984 and every 5 years thereafter; 2 in 1985 and every 5 years thereafter; and the balance if any in 1986 and every 5 years thereafter. Each director shall hold office until his successor is appointed and qualified. A director is eligible for reappointment.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Vacancy. Any vacancy in the office of director occurring other than by expiration of term shall be filled by a successor director, who shall serve for the remaining term of office so vacated.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Removal. Each director may be removed from office by the Governor for cause, after a public hearing, and may be suspended by the Governor pending the completion of the hearing.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Quorum. A majority, but not less than 3, of the directors then in office constitutes a quorum for the transaction of any business or the exercise of any power of the agency. Action may be taken and motions and resolutions adopted by the agency at any meeting by the affirmative vote of a majority of directors of the agency then in office. No vacancy in the office of director of the agency may impair the right of a quorum of the directors to exercise all powers and take any action.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. Bylaws. The board of directors of the agency shall adopt bylaws or other rules and regulations for the management of the affairs of the agency and carrying out the purposes of this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

10. Officers. The board of directors shall also elect one of its member directors as chairman of the agency and shall also elect a treasurer and secretary who may be, but need not be, directors. It may elect other officers and agents as necessary to perform those acts commonly delegated to the officers and agents of a business corporation and shall set their compensation.

[1987, c. 141, Pt. A, §6 (NEW) .]

11. Voting; conflict of interest. A director or officer of the agency who is also an officer, employee or member of a legislative body of a municipality or other public body or the State may not be precluded from voting or acting on behalf of the agency on a matter involving the municipality or public body or the State. Neither shall service as a director or officer of the agency constitute a conflict of interest for an officer, employee or member of a municipality or public body or the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

12. Agency existence. The agency and its existence shall continue as long as it has notes, bonds or other obligations or indebtedness outstanding, including notes, bonds or other obligations or indebtedness issued or incurred, and until its existence is terminated by law. The net earnings of the agency, beyond that necessary for retirement of its notes, bonds or other obligations or indebtedness or to implement the public purposes and programs authorized in this chapter, may not inure to the benefit of any person other than the State. Upon termination of the existence of the agency, title to all of the property owned by the agency, including any net earnings of the agency, shall vest in the State. The State reserves the right at any time to alter, amend, repeal or otherwise change the structure, organization, programs or activities of the agency, including the power to terminate the agency, subject to any limitation on the impairment of the obligation of any contract entered into by the agency.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1995, c. 254, §12 (AMD). 2011, c. 655, Pt. MM, §17 (AMD). 2011, c. 655, Pt. MM, §26 (AFF).

§4132. GENERAL POWERS AND DUTIES

The agency has all the powers necessary or convenient to carry out this chapter, including, without limitation, those general powers provided a business corporation by the Maine Business Corporation Act, Title 13-C, and including, without limiting the generality of this paragraph, the power: [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §56 (COR).]

1. Acceptance, grants or gifts. To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the United States or from any person, and to carry out the terms or provisions or make agreements with respect to any gifts or grants, and to do any acts necessary, useful, desirable or convenient in connection with procuring acceptance or disposition of gifts or grants;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Acquisition. To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than the fee;

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Disposal of real or personal property. To sell, lease, mortgage, exchange, transfer or otherwise dispose of any real or personal property or interest in it, or to grant options for any of those purposes;

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Assignment of revenues. To pledge or assign any money, fees, charges or other revenues of the agency and any proceeds derived by the agency from the sale of property, or from insurance or condemnation awards;

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Authorization. To perform any act authorized by this chapter through its officers, agents or employees or by the contracts with any person, firm or corporation;

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Borrow funds. To borrow money and issue its notes and bonds as provided in this chapter;

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Purchase electricity. To purchase electricity and energy, including without limiting the generality of this section, all or a portion of the capacity and output of one or more specific projects;

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Sale of electricity. To sell electricity and other products and services of electric power facilities to any person inside or outside the State or the United States. Utilities may purchase electricity sold by the agency, provided that nothing in this chapter authorizes resale of electricity purchased from the agency, except as otherwise authorized by law. This subsection does not allow retail sales to consumers or commercial and industrial users, except as otherwise provided by law;

[1987, c. 141, Pt. A, §6 (NEW) .]

9. Contracts. To contract for the use of transmission and distribution facilities owned by others for the delivery to the agency of electricity purchased by the agency and to purchasers of electric power and energy sold by the agency. These other owners may contract with the agency;

[1987, c. 141, Pt. A, §6 (NEW) .]

10. Other contracts. To contract with respect to the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission or use of electricity and to otherwise participate in intrastate, interstate and international arrangements with respect to those matters, including the New England power pool, except that this power may not be exercised so as to conflict with or diminish in any way the powers and obligations of the commission under this Title regarding planning and entering into agreements for the supply of electricity;

[1987, c. 141, Pt. A, §6 (NEW) .]

11. Plan. Individually or jointly with any other person to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in projects or portions of projects, the product or service from them, securities or obligations issued or incurred in connection with the financing of them or research and development relating to them, inside or outside the State. The agency may also enter into and perform contracts with any person with respect to the powers set out in this subsection. If the agency acquires or owns an interest as a tenant in common with others in any projects, the surrender or waiver by the agency or by the other property owner of its right to partition the property for a period not exceeding the period for which the property is used or useful for utility purposes may not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of the property;

[1999, c. 398, Pt. A, §92 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

12. Apply for permits. To apply to the appropriate agencies of the State, other states, the United States, Canada, any of its provinces and any divisions, departments, agencies and instrumentalities of Canada, and to any other proper agency for permits, licenses, certificates or approvals which may be necessary, and to construct, maintain and operate projects in accordance with these licenses, permits, certificates or approvals;

[1987, c. 141, Pt. A, §6 (NEW) .]

13. Application to expend assistance. To apply and contract for and to expend assistance from the United States or other sources, whether in form of a grant or loan or otherwise;

[1987, c. 141, Pt. A, §6 (NEW) .]

14. Contract; administrative services. To contract for administrative services with any person;

[1987, c. 141, Pt. A, §6 (NEW) .]

15. Execution. To make and execute all contracts and agreements and other instruments necessary or convenient in the exercise of the powers and functions of the agency under this chapter; and

[1987, c. 141, Pt. A, §6 (NEW) .]

16. Other powers and duties. To perform all acts necessary, convenient or desirable to carry out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 398, §A92 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B56 (COR).

§4133. ADDITIONAL POWERS

1. Contracts. The agency may contract to sell, and municipalities, cooperatives, utilities and governmental units, agencies or other public bodies may contract to purchase, all or a portion of, the capacity and output of one or more specific projects, or may contract to sell or purchase electricity without designation as to source. Without limiting the generality of this subsection, such a contract may provide for planning, engineering, design, acquiring sites or options for sites and expenses preliminary or incidental to that project. Such a contract may:

A. Be for the life of a project or other term or for an indefinite period; [1987, c. 141, Pt. A, §6 (NEW) .]

B. Provide for the payment of unconditional obligations imposed without regard to whether a project is undertaken, completed, operable or operating and despite the suspension, interruption, interference, reduction or curtailment of the output of a project; [1987, c. 141, Pt. A, §6 (NEW) .]

C. Contain provisions for prepayment, nonunanimous amendment, arbitration, delegation, requirements, purchases, restraints on resale or other dealings, exclusive dealing, territorial division, pricing and other conduct or arrangements and other matters determined necessary or desirable to carry out its purposes. For the purposes of this section, the agency has the same status with respect to antitrust actions as has the government of the State; and [1987, c. 141, Pt. A, §6 (NEW) .]

D. Provide for the creation of a committee of representatives of the municipalities, cooperatives and utilities purchasing electricity or services under such a contract, with such powers of supervision of the operation of the projects as the contract may provide which are not inconsistent with this chapter. [1987, c. 141, Pt. A, §6 (NEW) .]

Such a contract may also provide, in the event of default by any party to the contract in the performance of its obligations under the contract, for the other parties, including municipalities and cooperatives, to assume the obligations and succeed to the rights and interests of the defaulting party, pro rata or otherwise as may be agreed upon in the contract.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Agreements. The agency may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this chapter, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, distribution or storage of electricity and fuel of any kind in accordance with section 4103, subsection 9, inside and outside the State, in such amounts as it determines is necessary and appropriate to make the most effective use of its powers and to meet its responsibilities and with such persons, on such terms and for such period of time as its board of directors determines.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Debt limitation. Neither the obligations of the agency nor the obligations of any municipality under capacity and output contracts under this section may be included in computing the debt limitations of the municipalities. These obligations of municipalities shall be treated as expenses of operating their electric plants and shall constitute special obligations of these municipalities payable solely from the revenues and other money derived by them from their electric system or electric and utility systems. The liability of these municipalities from other funds is limited to obligations undertaken by them to pay for the electricity used by them.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Obligation. Municipalities and cooperatives are obligated to fix, revise and collect fees and charges for electricity and other services, facilities and commodities furnished or supplied through its electric system or electric and utility system at least sufficient to provide revenues adequate to meet its obligations under any output and capacity contracts and to pay all other amounts payable from or constituting a charge and lien upon those revenues.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Conveyance of real or personal property. Any municipality or cooperative may convey, transfer or assign to the agency, with or without consideration, any real or personal property or interest in either, including a leasehold estate.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4134. ACQUISITION OF PROPERTY

1. Eminent domain. The agency may acquire by the exercise of the power of eminent domain any real property, or any interest in real property, which it determines necessary for its purposes under this chapter, after the adoption by it of a resolution declaring the acquisition of the real property or interest in it described in the resolution is necessary for those purposes.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Restrictions. The agency shall exercise the power of eminent domain in the manner provided in Title 30-A, section 5108. References in Title 30-A, section 5108, to an urban renewal project and a renewal project area and the like are inapplicable. Notwithstanding Title 30-A, section 5108:

A. No facility for the generation, transmission or distribution of electricity owned by any person may be taken, except for the purpose of acquiring property or rights in it in order to permit the crossing of existing transmission or distribution facilities. In the event of a taking, the respective rights and obligations of the agency and the property owner shall, upon petition of either party, be determined by the commission. [1987, c. 141, Pt. A, §6 (NEW).]

B. No site for a project for which any utility or person had filed an application for preliminary permit, a license or application for exemption from the Federal Energy Regulatory Commission on or before November 1, 1977, may be taken until the time, if ever, that the application is denied, and no further renewals or appeals are available to the utility or person, or the utility or person abandons its application, permit or license; and [1987, c. 141, Pt. A, §6 (NEW).]

C. No property may be taken, except as may be necessary for the proper location of transmission or distribution lines and necessary appurtenances to them, unless the property is located within the territory in which a municipality or cooperative provides service or within one mile of the territory. [1987, c. 141, Pt. A, §6 (NEW).]

[1995, c. 254, §13 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1995, c. 254, §13 (AMD).

§4135. TAX EXEMPTION

1. Bonds or notes. All bonds, notes or other evidences of indebtedness issued under this chapter are issued by a political subdivision or a body corporate and politic of the State, and for an essential public and governmental purpose. Those bonds, notes or other evidences of indebtedness and the interest on them and the income from them, including any profit on their sale, and all activities of the agency and fees, charges, funds, revenues, incomes and other money of the agency, whether or not pledged or available to pay or secure the payment of those bonds, notes or other evidences of indebtedness or interest on them, are exempt from all taxation, franchise fees or special assessments of whatever kind, except for transfer, inheritance and estate taxes.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Property taxes. All real and personal property acquired by the agency is subject to taxes to the same extent as real and personal property owned by other transmission and distribution utilities.

[1999, c. 398, Pt. A, §93 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 398, §A93 (AMD). 1999, c. 398, §§A104,105 (AFF).

§4136. RULES AND RATES

1. Rules. The agency may make and enforce rules consistent with the purpose of this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Rates. The agency may establish, levy and collect or may authorize by contract, franchise, lease or otherwise, the establishment, levying and collection of rents, rates and other charge:

A. For the services afforded by the agency or afforded by or in connection with any project or properties which it may construct, erect, acquire, own, operate or control or with respect to which it may have any interest or any right to capacity; and [1987, c. 141, Pt. A, §6 (NEW).]

B. For the sale of electricity or of generation or transmission capacity or service as it determines necessary, proper, desirable and reasonable. [1987, c. 141, Pt. A, §6 (NEW).]

Rents, rates and other charges shall be at least sufficient to meet the expenses of the agency, including operating and maintenance expenses, reasonable reserves, interest and principal payments, including payments into one or more sinking funds for the retirement of principal, and other requirements of any trust agreement or resolution and any additional amounts which must be realized in order to meet the requirements of any rate covenant imposed by any resolution or trust agreement authorizing and securing bonds, notes or other evidences of indebtedness. The agency may pledge its rates, rents and other revenues, or any part of them, as security for the repayment, with interest and redemption premiums, if any, of any money borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owed by it under any contract.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4137. POWERS OF MUNICIPALITIES AND COOPERATIVES

By resolution of its governing body, a municipality or cooperative may: [1987, c. 141, Pt. A, §6 (NEW).]

1. Director. Appoint a director to the board in accordance with section 4131;

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Contracts. Contract with the agency for the generation, manufacture, purchase, sale, exchange, distribution or transmission of electricity and other services on such terms and for such period of time as the resolution may provide;

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Appropriation. Appropriate or provide revenues and other money derived by them from their electric departments or systems or, in the case of those municipalities having combined electric, water, sewer and other utility systems, the revenues derived from such combined systems under any contract with the agency; and

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Other contracts. Make and execute all contracts, agreements and other instruments, and perform all acts necessary and convenient or desirable to carry out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4138. CONSTRUCTION CONTRACTS

The agency may contract for the planning, acquisition, construction, operation, maintenance, repair, extension and improvement of any project or may contract with other public or private owners of any project to perform these functions without preparing final plans and specifications in advance of construction or securing performance and payment bonds, except to the extent that the directors determine that these actions are desirable in furtherance of the purposes of this chapter. Except as otherwise provided by this section, no contract may be invalid or unenforceable by reason of nonperformance of the conditions required by any other law relating to public contracts. The agency shall adopt a procedure for awarding contracts relating to a project 50% or more of which is owned by the agency, which procedure may not be inconsistent with that of the State established in Title 5, chapters 153 and 155. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 3: FORM AND NATURE OF BONDS AND NOTES

§4151. BONDS AND NOTES

1. Bonds and notes. The issuance of bonds, notes and other evidences of indebtedness is subject to the following.

A. The agency may, from time to time, issue its bonds, notes or other evidences of indebtedness in the principal amount as the agency determines is necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on bonds, notes or other evidences of indebtedness of the agency, establishment of reserves to secure the bonds, notes or other evidences of indebtedness and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers. Without limiting the generality of this paragraph, the bonds, notes or other evidences of indebtedness may be issued for project costs or the agency's share of project costs. [1987, c. 141, Pt. A, §6 (NEW).]

B. The agency may, from time to time, issue notes, renew notes and bonds, pay notes, including the interest on them and, whenever it determines refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. [1987, c. 141, Pt. A, §6 (NEW).]

C. Except as may otherwise be expressly provided by resolution of the agency, every issue of its bonds, notes or other evidences of indebtedness shall be general obligations of the agency, payable out of any revenue or money of the agency, subject only to any agreements with the holders of particular bonds, notes or other evidences of indebtedness pledging any particular revenues. [1987, c. 141, Pt. A, §6 (NEW).]

D. Bonds, notes or other evidences of indebtedness may be issued in accordance with this chapter. [1987, c. 141, Pt. A, §6 (NEW).]

E. The bonds, notes or other evidences of indebtedness shall be authorized by resolution of the agency, bear the date and mature at the time as the resolution may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds, or as a combination of them. The resolution may provide that the bonds, notes or other evidences of indebtedness bear interest at a given rate or may provide a method of determining a rate, be in certain denominations, in temporary, coupon or registered form, carry certain registration privileges, be executed in a given manner, payable in a given medium of payment, at a place inside or outside the State and subject to specified terms of redemption. The bonds, notes or other evidences of indebtedness of the agency may be sold by the agency, at public or private sale, at the price the agency determines. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Authorization. Any resolution authorizing any bonds, notes or other evidences of indebtedness or any issue of them, may contain provisions which shall be a part of the contract or contracts with the bond or noteholders, as to:

- A. Pledging, mortgaging or granting a security interest in any real or personal property and all or any part of the revenues of the agency or any revenue-producing contract made by the agency with any person to secure the payment of the notes or bonds or of any issue of them subject to agreements with noteholders or bondholders that may then exist; [1987, c. 141, Pt. A, §6 (NEW).]
- B. The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the agency may have any rights or interest; [1987, c. 141, Pt. A, §6 (NEW).]
- C. The rates or charges for electricity sold by, or services rendered by, the agency, the amount to be raised by the rates or charges and the use and disposition of any revenue; [1987, c. 141, Pt. A, §6 (NEW).]
- D. The setting aside of reserves or sinking funds and their regulation and disposition; [1987, c. 141, Pt. A, §6 (NEW).]
- E. Limitations on the purpose to which the proceeds of sale of bonds, notes or other evidences of indebtedness may be applied and the pledging of the proceeds to secure the payment of the bonds, notes or other evidences of indebtedness or of any issue of them; [1987, c. 141, Pt. A, §6 (NEW).]
- F. Limitations on the issuance of additional bonds, notes or other evidences of indebtedness the terms upon which additional bonds, notes or other evidences of indebtedness may be issued and secured and the refunding of outstanding or other bonds, notes or other evidences of indebtedness; [1987, c. 141, Pt. A, §6 (NEW).]
- G. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of bonds, notes or other evidences of indebtedness the holders must consent and the manner in which consent may be given; [1987, c. 141, Pt. A, §6 (NEW).]
- H. The vesting in a trustee or trustees, inside or outside the State, of such property, rights, powers and duties in trust as the agency may determine, which may include any of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee; [1987, c. 141, Pt. A, §6 (NEW).]
- I. Defining the act or omission to act which constitutes a default in the obligations and duties of the agency to the holders of the bonds, notes or other evidences of indebtedness and providing for the rights and remedies of the holders of the bonds, notes or other evidences of indebtedness in the event of such default, space including as a matter of right the appointment of a receiver, which rights and remedies may vary from those provided in section 4156; and [1987, c. 141, Pt. A, §6 (NEW).]
- J. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds, notes or other evidences of indebtedness. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Pledges. Any pledge made by the agency is valid and binding from the time when the pledge is made. The revenue, money or property pledged and then received by the agency shall immediately be subject to the lien of the pledge without any physical delivery of it or further act. That pledge is valid and binding as against

all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether those parties have notice of it. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Liability. Neither the directors nor executive officers of the agency nor any other person executing the bonds, notes or other evidences of indebtedness may be subject to any personal liability or accountability by reason of the issuance of the bonds, notes or other evidences of indebtedness.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Agency; power. The agency, subject to whatever agreement with noteholders or bondholders as may then exist, may, out of any funds available for that purpose, purchase notes or bonds of the agency, which shall then be canceled.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Bonds or notes secured. In the discretion of the agency, the bonds, notes or other evidences of indebtedness may be secured by a trust indenture by and between the agency and a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside the State. The trust indenture may contain provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders that may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the exercise of its corporate powers and the custody, safeguarding and application of all money. The agency may provide by the trust indenture for the payment of the proceeds of the bonds or notes and the revenue to the trustee under the trust indenture or other depository and for the method of disbursement, with safeguards and restrictions as it may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expense of the agency. If the bonds or notes are secured by a trust indenture, the trust indenture may provide that the noteholders and bondholders may not appoint a separate trustee to represent them.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Negotiability of bonds or notes. Unless the agency expressly provides otherwise, a bond, note or other evidence of indebtedness issued under this chapter is fully negotiable for all purposes of the applicable provisions of Title 11 and each holder or owner of a bond or note, or any coupon appurtenant to a bond or note, by accepting the bond, note or coupon shall be conclusively deemed to have agreed that the bond, note or coupon is fully negotiable for those purposes.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Investment securities. All bonds, notes and interest coupons appertaining to them issued by the agency have all the qualities and incidents, including negotiability, unless the agency expressly provides otherwise, of investment securities under the applicable provisions of Title 11, Article 8-A, but no provision of Title 11, Article 9-A, respecting the filing of a financing statement to perfect a security interest is applicable to any pledge made or security interest created in connection with the issuance of the bonds, notes or coupons.

[1999, c. 699, Pt. D, §25 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

9. Signature; validity. If any director or executive officer of the agency whose signature appears on any notes, bonds or coupons ceases to be a director or executive officer before the delivery of the notes or bonds, the signature is valid for all purposes, as if he had remained in office until that delivery.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 1999, c. 699, §D25 (AMD). 1999, c. 699, §D30 (AFF).

§4152. PRESUMPTION OF VALIDITY

After issuance, all bonds or notes of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State and any person or governmental unit shall be stopped from questioning their authorization, sale, issuance, execution or delivery by the agency. [1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4153. FEDERAL INSURANCE OF GUARANTY; TAXABLE BOND OPTION

1. Agency authorization. The agency may obtain from any department or agency of the United States or nongovernmental insurer any insurance or guaranty, to the extent available as to, of, or for, the payment or repayment of, interest or principal, or both, or any part of interest or principal, on any bonds, notes or other evidences of indebtedness issued by the agency, or on any municipal obligations of governmental units or cooperatives purchased or held by the agency, pursuant to this chapter; and notwithstanding any other provision of this chapter, enter into any agreement or contract with respect to any insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the agency to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the agency.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Interest. The agency may covenant and consent that the interest on certain of its bonds shall be includable under the United States Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders of them under the United States Internal Revenue Code or any subsequent law. Nothing contained in this chapter may be construed to covenant or consent or to authorize any covenant or consent to the application of any other provision of any other laws, federal or state, to the agency or its bonds or notes to the elimination or modification in any way of any other exemption, privilege or immunity of them, except to the extent that may be required to undertake projects outside of the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4154. REFUNDING OBLIGATIONS; ISSUANCE

The agency may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under this chapter, including the payment of any cost of issuance of them, if any, redemption premium on them and any interest accrued or to accrue to the date of redemption of these obligations and for any corporate purpose of the agency. The issuance of the obligations,

the maturities, and other details pertaining to them, the rights of their holders and the rights, duties and obligations of the agency in respect to them shall be governed by this chapter which relate to the issuance of obligations, insofar as those provisions may be appropriate. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4155. REFUNDING OBLIGATIONS; SALE

Refunding obligations issued as provided in section 4154 may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds from them may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of those outstanding obligations. Pending the application of the proceeds of any refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of these refunding obligations or in the trust agreement securing them, to the payment of any interest on refunding obligations to be refunded or the trust agreement securing and any expenses in connection with refunding, such proceeds may be invested as specified in the resolution authorizing the obligations and any expenses in connection with refunding, such proceeds may be invested as specified in the resolution authorizing the obligations to be refunded or the trust agreement securing them. These investments shall mature or shall be subject to redemption by their holders, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4156. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS

1. Default. In the event that the agency defaults in the payment of principal or interest on any bonds or notes issued under this chapter after it becomes due, whether at maturity or upon call for redemption and the default continues for a period of 30 days, or in the event that the agency fails or refuses to comply with this chapter, or defaults in any agreement made with the holders of an issue of bonds, notes or other evidences of indebtedness of the agency, the holders of 25% in aggregate principal amount of the bonds or notes of the issue then outstanding, by instrument or instruments filed in the office of the Secretary of State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of those bonds or notes for the purposes provided in this chapter.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Trustee; duties. The trustee appointed in subsection 1 may, and upon written request of the holders of 25% in principal amount of the bonds and notes then outstanding shall, in the trustee's own name:

A. Enforce all rights of the bondholders or noteholders, including the right to require the agency to fix and collect rates, fees and charges relating to projects or other obligations held by it adequate to carry out any agreement as to, or pledge of, the revenues of the agency and to require the agency to carry out any other agreements with the holders of the bonds or notes and to perform its duties under this chapter; [1987, c. 141, Pt. A, §6 (NEW).]

B. Enforce all rights of the bondholders or noteholders, including the right to take possession and control of the business and properties of the agency, operate and maintain the business, make any necessary repairs, renewals and replacements to them and fix, revise and collect fees and charges, so as to carry out any contract as to, or pledge of, revenues and require the agency to carry out and perform the terms of any contract with the holders of the bonds or notes or its duties under this chapter; [1987, c. 141, Pt. A, §6 (NEW).]

C. Bring suit upon all or any part of the bonds, notes or other evidences of indebtedness; [1987, c. 141, Pt. A, §6 (NEW).]

D. By action or suit, require the agency to account as if it were the trustee of an express trust for the holders of the bonds, notes or other evidences of indebtedness; [1987, c. 141, Pt. A, §6 (NEW).]

E. By action or suit, enjoin any acts which may be unlawful or in violation of the rights of the holders of the bonds, notes or other evidences of indebtedness; and [1987, c. 141, Pt. A, §6 (NEW).]

F. Declare all bonds, notes or other evidences of indebtedness due and payable and, if all defaults are made good, with the consent of the holders of 25% of the principal amount of the bonds or notes then outstanding, annul the declaration and its consequences. [1987, c. 141, Pt. A, §6 (NEW).]

The trustee shall, in addition to the powers set out in paragraphs A to F, possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this chapter or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Notice. Before declaring the principal of bonds, notes or other evidences of indebtedness due and payable, the trustee shall first give 30 days' notice in writing to the Governor, the agency and the Department of Attorney General.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Action. The Superior Court of Kennebec County has jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders or noteholders.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4157. CREDIT OF STATE AND MEMBERS OF AGENCY NOT PLEDGED

Obligations issued under this chapter are not deemed to constitute a debt, liability or obligation of the State, any political subdivision other than the agency or any municipality or cooperative, nor may they be deemed to constitute a pledge of the faith and credit of the State, any political subdivision or any municipality or cooperative, but are payable solely from the revenues or assets of the agency. Each obligation issued by the agency shall contain on its face a statement to the effect that the agency is not obligated to pay the obligation or the interest on it, except from the revenues or assets pledged or otherwise available for those purposes and that neither the faith and credit nor the taxing power of the State, any political subdivision other than the agency or any municipality or cooperative is pledged to the payment of the principal of or the interest of these obligations. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4158. NOTES AND BONDS AS LEGAL INVESTMENT

The State and all public officers, governmental units and agencies of the State, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, all credit unions and all executors,

administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds, notes or other evidences of indebtedness issued under this chapter, and the bonds, notes or other evidences of indebtedness are authorized security for any public deposits. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4159. NO IMPAIRMENT OF OBLIGATION

The State pledges to and agrees with the holders of the bonds, notes and other evidences of indebtedness issued under this chapter that the State will not limit or restrict the rights vested in the agency to perform its obligations and to fulfill the terms of any agreement made with the holders of its bonds or notes. The State will not impair the rights and remedies of the holders until the bonds, notes and other evidences of indebtedness together with interest on them, and interest on any unpaid installments of interest, are fully met, paid and discharged. The agency may execute this pledge and agreement of the State in any agreement with the holders of the bonds, notes or other evidences of indebtedness. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

Subchapter 4: MISCELLANEOUS PROVISIONS

§4171. ANNUAL REPORTS; AUDIT

On or before 90 days after the end of each fiscal year, the agency shall submit a report of its activities for the preceding fiscal year to the Governor, the commission and the Legislature. Each report shall set forth a complete operating and financial statement covering its operations during the year, and shall contain a full and complete statement of the agency's anticipated budget and operations for the ensuing year. The agency shall cause an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants. The cost shall be considered an expense of the agency and copies shall be filed with the Treasurer of State. [1987, c. 141, Pt. A, §6 (NEW).]

The State Auditor and his authorized representatives may at any time examine the accounts and books of the agency, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial statements. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4172. STATE SERVICES

All offices, departments, boards, agencies, divisions and commissions of the State may render any services to the agency as may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the agency shall, at the request of the officer, department, board, agency, division or commission rendering the services, be met and provided for by the agency. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4173. JURISDICTION OF PUBLIC UTILITIES COMMISSION

The agency is subject to the jurisdiction of the commission in the same manner as any other public utility; provided that, with respect to the approval of securities to be issued to finance the costs of a project or an interest in a project by the agency, upon the request of the agency, the commission shall approve, at one time, bonds which are sufficient to finance the agency's entire costs of the project even if the bonds are to be issued in series from time to time and even though the exact amount of the cost has not been finally determined and the approval may be of an undetermined or indefinite amount; as long as the project has been approved by the commission pursuant to section 3132 and provided that, with respect to the fixing of rates to be charged by the agency for electricity and other services, where the acquisition or construction of a project or any interest in a project is to be financed by the issuance of securities under this chapter secured by a pledge of revenues derived from contracts for the sale of power and energy, transmission and related services and such contracts as proposed provide for rate and charges to be set by a formula or formulas based upon costs incurred or to be incurred in connection with the financing and operation of the project, which may include reasonable reserves for the costs, if the commission determines that the formula and formulas are reasonably related to the costs, the commission shall issue an order approving the formula or formulas and no further approval by the commission of the rates and charges determined pursuant to the contracts shall be required. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF).

§4174. ENVIRONMENTAL REGULATION

The agency is subject to the jurisdiction of the Department of Environmental Protection and the Maine Land Use Planning Commission in the same manner as any other public utility. [1987, c. 141, Pt. A, §6 (NEW); 2011, c. 682, §38 (REV).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 855, §§1,2 (AFF). 2011, c. 682, §38 (REV).

§4175. LIBERAL CONSTRUCTION

Neither this chapter nor anything contained in this chapter is a restriction or limitation upon any powers which the agency might otherwise have under any laws of the State and this chapter is cumulative to any such powers. This chapter provides a complete, additional and alternative method for doing acts authorized by it and shall be regarded as supplemental and additional to powers conferred by other laws. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 622, §S36 (RP). 1991, c. 855, §§1,2 (AFF).

§4176. INCONSISTENT PROVISIONS OF OTHER LAWS SUPERSEDED

Insofar as the provisions of this chapter are inconsistent with the provisions of any special act or any charter of any participating municipality, this chapter is controlling. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 622, §S36 (RP). 1991, c. 855, §§1,2 (AFF).

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